

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

LEVAR PAYTON, #411-397

*

Plaintiff

*

v

*

Civil Action No. ELH-16-1263

ALLEGANY CIRCUIT COURT

*

Defendant

*

MEMORANDUM

Plaintiff Levar Payton, a Maryland Division of Correction prisoner housed at North Branch Correctional Institution (“NBCI”), brings this civil rights action under 42 U.S.C. § 1983, seeking money damages. Payton alleges that on one unspecified occasion he was “present before a judge dressed with mace no underwear no shoes and bare chested with shackles in the courthouse that’d [sic] violated constitutions.” ECF 1 at p. 3. In addition to this Complaint, Payton has filed a Motion for Leave to Proceed in Forma Pauperis (ECF 2), which shall be granted pursuant to 28 U.S.C. § 1915(a).

This court is obligated by 28 U.S.C. §1915A(b)(1) and (2) to screen prisoner complaints and dismiss any complaint that is frivolous, malicious, or fails to state a claim upon which relief may be granted. In deciding whether a complaint is frivolous “[t]he district court need not look beyond the complaint's allegations It must, however, hold the pro se complaint to less stringent standards than pleadings drafted by attorneys and must read the complaint liberally.” *White v. White*, 886 F. 2d 721, 722-723 (4th Cir. 1989); *see Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

Under the provisions of 28 U.S.C. § 1915(e)(2), a case “shall be dismissed at any time if the court determines that– (A) the allegation of poverty is untrue; or (B) the action or appeal– (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.”

Payton names the “Allegany Circuit Court” as the sole defendant. A court, however, is not a “person” subject to suit under 42 U.S.C. § 1983. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

Even if a proper defendant had been identified, the case is subject to dismissal. The Due Process Clause prohibits the routine use of physical restraints visible to a jury during the guilt phase of a criminal trial, absent a special need. *See Deck v. Missouri*, 544 U.S. 622, 626 (2005). Examination of Maryland’s electronic docket reveals that Payton has appeared in the Allegany County Circuit Court on several occasions, none involving a jury. In *State of Maryland v. Payton*, Case No. 01K15816506, Payton was charged with assault on a Division of Correction (“DOC”) employee on January 13, 2015. Various motions have been argued, but the case has not resulted in trial. In *State of Maryland v. Payton*, Case No. 01K16017324, Payton was charged with assault on a DOC employee on September 19, 2015. It appears Payton made an initial appearance on May 3, 2016. Similarly, in *State of Maryland v. Payton*, Case No. 01K16017325, Payton was charged with a July 20, 2015, assault on a DOC employee, and has been to court on an initial appearance. Case No. 01K15016524, *State of Maryland v. Payton*, charges Payton with the offense on December 29, 2014, of possession of a weapon while confined. Various motions have been argued, but the matter has not been brought to trial.

The facts of this case do not state a constitutional claim. Accordingly, the Complaint shall be dismissed, without prejudice, in a separate Order to follow.

April 29, 2016
Date

/s/
Ellen L. Hollander
United States District Judge